STATE OF MICHIGAN

COURT OF APPEALS

JUDY ANN LINN,

Petitioner-Appellant,

v

TOWNSHIP OF MERIDIAN,

Respondent-Appellee.

UNPUBLISHED
February 18, 2003

No. 238612
Tax Tribunal
LC Nos. 00-236301; 00-265778

Before: Neff, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right an order of the Michigan Tax Tribunal, dismissing her petition to recover excess property taxes paid for 1995 because of a clerical error or mistake of fact, MCL 211.53a. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

I

Petitioner owns two adjacent parcels of agricultural property in Meridian Township.[1] At issue is whether the Tax Tribunal has jurisdiction over petitioner's claim for recovery of excess taxes paid on the basis of a clerical error or mutual mistake of fact, MCL 211.53a, where the taxable values for the parcels of property were the subject of a prior property tax appeal in which the Tax Tribunal made a determination of the taxable values, which were affirmed on appeal to this Court.[2]

Petitioner argues that the Tax Tribunal erred in dismissing her petition for recovery of excess taxes paid for 1995. She contends that the fact that the Tax Tribunal previously determined the 1995 taxable value for the subject property in a prior appeal does not deprive the

[1] This property was part of the estate of Floyd B. Linn and certain prior tax appeals were filed on behalf of the estate.

[2] *Estate of Floyd B. Linn v Meridian Township,* unpublished opinion per curiam of the Court of Appeals, issued October 3, 1997 (Docket No. 193571).

Tax Tribunal of jurisdiction in this claim. No opposing briefs have been filed in this case.[3] We therefore do not have the benefit of responsive argument from the Tax Tribunal.

II

In the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Appellate review of the tribunal's factual findings is limited to whether the findings are supported by competent, material, and substantial evidence on the whole record. *Professional Plaza, LLC, v Detroit*, 250 Mich App 473, 474; 647 NW529 (2002).

MCL 211.53a provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The Tax Tribunal concluded that even though § 53a provides independent "subject matter jurisdiction to the Tax Tribunal to correct 'a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer,'" the Tax Tribunal lacked subject matter jurisdiction in this case. The Tax Tribunal reasoned that because the property's taxable value for the 1995 tax year was established by the Tax Tribunal in the prior property tax appeal, "the property's taxable value for the 1995 tax year was not 'made by the assessing officer and the taxpayer,'" and thus petitioner failed to properly invoke the Tax Tribunal's subject matter jurisdiction over the property's taxable value for the 1995 tax year under MCL 211.53a. We disagree.

The statute does not require that the "taxable value" be made by the assessing officer and the taxpayer. It requires an alleged "mutual mistake of fact" be made by the assessing officer and the taxpayer. The Tax Tribunal committed an error of law in concluding that because the properties' 1995 taxable value was determined in a prior property tax appeal, the Tax Tribunal lacked subject matter jurisdiction under § 53a to correct a clerical error or mutual mistake of fact.

The dismissal of petitioner's claim for the 1995 tax year for lack of subject matter jurisdiction on the basis of this reasoning was improper. In view of our conclusion, we need not reach petitioner's constitutional claim. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

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[3] Petitioner states that respondent "acquiesces in the relief sought by [petitioner] in this matter, and so has not entered an appearance to defend the appeal"; however, we find no evidence of respondent's acquiescence in the record on the appeal. Nonetheless, we note that the record below contains respondent's stipulation to corrections in the 1995 taxable values of the properties at issue because of a clerical error of mutual mistake of fact.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly